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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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9 ESAUL CARDENAS,

10 Petitioner,

11 v.

12 WARDEN VARE, *et al.*,

13 Respondents.

Case No. 3:04-cv-00720-RCJ-WGC

ORDER

14 This counseled habeas petition pursuant to 28 U.S.C. § 2254 comes before the Court on
15 petitioner's motion to reopen case to voluntarily dismiss petition (ECF No. 80).

16 The Court administratively closed this action on March 18, 2013, to allow petitioner to
17 exhaust his unexhausted claims in state court. (ECF No. 77). Petitioner represents that his state
18 court proceedings have terminated and that he wishes to reopen this action for the limited purpose
19 of voluntarily dismissing his petition. (ECF Nos. 79 & 80). Petitioner indicates that he
20 understands that by dismissing the instant petition, he will no longer be able to pursue remedies in
21 federal court related to the underlying criminal proceedings challenged in this case. (ECF No. 80-
22 1 at 2-3). Respondents have not opposed petitioner's motion to voluntarily dismiss, and the time
23 for doing so has expired.

24 Pursuant to Federal Rule of Civil Procedure 41(a)(2), a petitioner may voluntarily dismiss
25 his petition pursuant to an order of the court on terms the court considers proper. Fed. R. Civ. P
26 41(a)(2).¹ Upon review of the history of this action, petitioner's motion, and petitioner's

27 ¹ Although respondents have not answered the current operative petition in this case, they have previously
28 answered an earlier version of the petition. To the extent this precludes self-operative voluntary dismissal pursuant
to Federal Rule of Civil Procedure 41(a)(1), the Court analyzes petitioner's motion pursuant to Rule 41(a)(2).

1 declaration, the Court will grant the petitioner's request to voluntarily dismiss his petition.
2 Pursuant to Rule 41(a)(2) and absent any objection by respondents, the dismissal will be without
3 prejudice. The Court notes, however, that by dismissing the petition without prejudice, it in no
4 way suggests or represents to petitioner that any future petitions would be procedurally proper.

5 IT IS THEREFORE ORDERED that petitioner's motion to reopen this action for the
6 limited purpose of dismissing the petition and entry of judgment (ECF No. 80) is GRANTED.


7 IT IS FURTHER ORDERED that this action is hereby REOPENED for the limited purpose
8 of dismissing the petition and entry of judgment.

9 IT IS FURTHER ORDERED that the petition for writ of habeas corpus in this case is
10 DISMISSED WITHOUT PREJUDICE.

11 IT IS FURTHER ORDERED that the Clerk of the Court shall enter final judgment
12 accordingly and CLOSE this case.

13 IT IS SO ORDERED.

14 DATED THIS 24 day of July 2018.

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17 ROBERT C. JONES
18 UNITED STATES DISTRICT JUDGE
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